Filed 7/8/04 Rose v. Maljanian CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

DAVID M. ROSE, Plaintiff and Respondent, v. JAMES E. MALJANIAN, Defendant and Appellant.	B171373 (Los Angeles County Super. Ct. No. GS007230)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jan A. Pluim, Judge. Affirmed.

William A. Soroky for Defendant and Appellant.

Mark M. O'Brien for Plaintiff and Respondent.

Defendant James E. Maljanian appeals from a judgment confirming an arbitration award. The confirmation was in favor of plaintiff David M. Rose and arose out of a dispute concerning property jointly owned by the parties. Maljanian argues the trial court should have vacated the original award and disallowed later amendments. His reasons are that the arbitrator gave an appearance of bias, the original award was incomplete

under Code of Civil Procedure section 1283.4 (all subsequent statutory references are to this code), and the procedure used to amend it was unauthorized. Finding no error, we affirm.

FACTUAL AND PROCEDURAL SUMMARY

Rose and Maljanian jointly owned a 2.6-acre parcel of land with one house in Monrovia (the property). They planned to subdivide the property and build six additional houses on it. But after disagreements, in April 2002, Rose and Maljanian signed a mediation agreement. This included a provision that mediation would continue until the matter was resolved or mediation efforts broke down, at which point either party could petition to have the dispute submitted to an arbitrator. Three months later, Rose filed a demand for arbitration with the American Arbitration Association (AAA).

Pursuant to AAA rules, Ara Hovanesian was selected from an AAA panel to arbitrate the dispute. Hovanesian, who is both an accountant and an attorney, was to apply California law in rendering his award. He held a hearing at which the parties presented evidence and argument. In April 2003, Hovanesian issued an award in which he found Rose to be the prevailing party and entitled to costs and attorney's fees. He ordered Maljanian to transfer his ownership interest to Rose, release any lis pendens, and vacate the property "forthwith." Rose was ordered to pay Maljanian $149,948 "from the sales proceeds of the project to develop and sell seven . . . homes" on the property. After Maljanian received the award, he requested explanation and modification of numerous issues, including the absence of any deadline for payment of the $149,948 or any provision for what should happen if Rose failed to develop the property. Hovanesian declined to modify the award on the ground that he did not have authority to reopen the hearings.

Rose filed a petition to confirm the award. In his response to the petition, Maljanian argued the award should be vacated because Hovanesian committed prejudicial misconduct, improperly failed to disqualify himself, and failed to determine all issues necessary to resolve the dispute. To support the first two arguments, Maljanian

asserted that early in the arbitration hearing, Hovanesian said he was a developer always looking for suitable properties to develop and suggested that Rose and Maljanian resolve their dispute by selling the property to him. Maljanian contended that, by these remarks, Hovanesian revealed an improper interest in the property, and that he had failed to previously disclose that he was a developer and, as such, likely to be biased in favor of Rose, a developer. Maljanian characterized himself as a "non-developer." He complained in writing to the AAA about this alleged bias immediately after the arbitration hearing and before Hovanesian issued his original, unamended award. As to his third argument, Maljanian asserted the award was incomplete, since there was no requirement that Rose develop or sell the property within a certain time, and hence no assurance that Maljanian would receive his $149,948 within a reasonable time, or at all.

The trial court rejected Maljanian's arguments regarding improper interest and lack of disclosure, but ordered the parties to seek clarification from Hovanesian as to when Maljanian would receive his payment. Both parties questioned whether that procedure was authorized. In a conference call with counsel for both parties, Hovanesian determined that under existing case law, he still had jurisdiction to amend the award on the issue to be clarified, since the award had not yet been confirmed. On August 1, 2003, Hovanesian issued an "Amended Award of Arbitrator" which ordered Rose to pay Maljanian $149,948 "no later than October 31, 2003" and required Maljanian concurrently to deliver to Rose documents transferring Maljanian's interest, and to release any lis pendens. The trial court granted Rose's motion to confirm this amended award and issued a judgment based upon that award. Maljanian filed this timely appeal.

DISCUSSION

An aggrieved party may appeal from a judgment confirming an arbitration award. (§§ 1287.4, 1294.) An order denying vacation of an award is reviewable upon appeal from the judgment of confirmation. (§ 1294.2; *Mid-Wilshire Associates v. O'Leary* (1992) 7 Cal.App.4th 1450, 1454.) In reviewing a judgment confirming an arbitration award, we review undisputed facts and questions of law de novo. (*Reed v. Mutual*

Service Corp. (2003) 106 Cal.App.4th 1359, 1364-1365 (*Reed*).) But we review the trial court's findings of fact for substantial evidence and draw every reasonable inference to support the award. (*Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 24.)

I

Maljanian argues the trial court should have vacated the original award and not confirmed the amended award because Hovanesian showed the appearance of bias and failed to disclose that he was a local developer.

A neutral arbitrator must disclose matters that might create an appearance of bias. Failure to do so may constitute grounds to set aside the award. (§ 1286.2, subds. (a)(1), (a)(2); *Reed, supra*, 106 Cal.App.4th at p. 1370.) Whether an award is tainted with bias because of an arbitrator's nondisclosure is a question of fact for the trial court when it reviews the award. The party claiming bias must establish facts that would create an impression of bias in the mind of a reasonable person. (*Reed*, at pp. 1370-1371.)

Maljanian's entire argument on this issue hinges on a single exchange with Hovanesian during the arbitration hearing, described in Maljanian's letter to the AAA complaining about the arbitration process. After looking over documents that showed cost and profit estimates for the planned development of the property, Hovanesian allegedly said, "'Wow, this project looks pretty good in regards to the numbers and potential profit . . . you guys are going to make a lot of money once you get started . . . . I've got an idea . . . you know, I'm a developer in the area and I'm always looking for unique properties that I can develop and make a nice profit on . . . . [W]hy don't I buy the property from both of you and solve both your problems?'" Everyone laughed. Maljanian then asked, "'Are you serious?'" Hovanesian replied, "'Well, I'm thinking about it . . . but let's come back to that in a bit . . . let's continue for now.'"

Maljanian acknowledged in his letter to the AAA that "Everyone laughed at first" after Hovanesian suggested buying the property from the disputants. Thus, Maljanian's own evidence indicates that everyone who was participating in the hearing understood the suggestion to be a joke, with the possible exception of Maljanian. When Maljanian asked

him if he was serious, Hovanesian responded with a noncommittal answer that appears to have been a continuation of the joke, saying he would come back to the issue later. Maljanian does not allege that Hovanesian ever said anything further about the matter, and Maljanian offered no other evidence to indicate either that Hovanesian was a developer or that he had any interest in the property.

Hovanesian's statements, apparently made in jest, do not demonstrate bias on the part of the arbitrator, or an appearance thereof, in the mind of a reasonable person. In his letter to the AAA, Maljanian stated that had he known Hovanesian was a developer, he never would have accepted him as an arbitrator, "because [Rose] is a developer and [Hovanesian] would tend to see the issues through [a developer's perspective] because that's what he does for a living." Maljanian's evidence did not show that Hovanesian developed properties for a living. Even if it had, it is doubtful that Hovanesian's status as a developer, by itself, would create the appearance of bias under the relevant statutes, which focus on personal or family interests and relationships. (§§ 170.1, 1281.9, 1281.91; *Reed*, *supra*, 106 Cal.App.4th at p. 1371.) Nor is a suggestion of buying the property, made in jest, sufficient by itself to show an improper interest in the property.

We find substantial evidence supports the trial court's implicit factual finding of no improper lack of disclosure or appearance of bias. On this record, were we to review the matter de novo, we would reach the same conclusion as the trial court.

II

Maljanian argues the trial court should have vacated the original award and not confirmed the amended award, because the original award was incomplete and violated section 1283.4. He also argues the trial court had no authority to seek clarification of the award from Hovanesian.

Through its enactment of Title 9 of the Code of Civil Procedure, the Legislature has expressed a strong public policy in favor of arbitration as a relatively quick and inexpensive means of dispute resolution. (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9.) As such, courts indulge every intendment to give effect to arbitration proceedings.

Parties who enter arbitration agreements normally expect that their disputes will be resolved without further contact with the courts. (*Ibid*.) To expand the availability of judicial review of arbitration awards would tend to defeat the very purpose of the arbitration process. (*Id*. at p. 10.) Thus, courts do not review the merits of the controversy between parties in arbitration or the validity of the arbitrator's reasoning. (*Id*. at p. 11.)

Under section 1286, a court either must confirm an award as made, correct the award, vacate the award, or dismiss the proceeding pursuant to statutory provisions in Chapter 4 of Title 9. A court may correct an award and confirm it as corrected for any of the reasons stated in section 1286.6. Since the court itself did not correct this award, these provisions do not apply. The sole relevant statutory provision regarding dismissal also does not apply. (§ 1287.2.)

A court may vacate an arbitration award only for reasons listed in section 1286.2. One of these applies where a party was substantially prejudiced by conduct of the arbitrators, contrary to provisions of Title 9. (§ 1286.2, subd. (a)(5); *A.M. Classic Construction, Inc. v. Tri-Build Development Co.* (1999) 70 Cal.App.4th 1470, 1475 (*A.M. Classic*).) Maljanian argues that since the original award had no provision for him to receive his money if Rose fails to develop the property, it was incomplete and violated section 1283.4, which provides that an arbitration award "shall include a determination of all the questions submitted to the arbitrators the decision of which is necessary in order to determine the controversy." Maljanian contends this is a ground for vacating the award under section 1286.2, subdivision (a)(5). He also argues the trial court had no other means to address this problem.

Recent appellate decisions do not support this argument. Sections 1286 through 1287.6 limit the ways in which trial courts may alter arbitration awards directly. Section 1284 provides certain procedures by which an arbitrator may correct an award. But section 1283.4 and other provisions of Title 9 neither expressly authorize nor prohibit other amendments of an award by the arbitrator. (*A.M. Classic*, *supra*, 70 Cal.App.4th at p. 1475.) California courts have recognized that an arbitrator may issue an amended

award to resolve an issue omitted from the original award through the mistake, inadvertence, or excusable neglect of the arbitrator, if the amendment is made before judicial confirmation of the original award, is not inconsistent with other findings on the merits of the controversy, and does not cause demonstrable prejudice to the legitimate interests of any party. (*A.M. Classic*, at p. 1478; *Delaney v. Dahl* (2002) 99 Cal.App.4th 647, 650, 657-659; *Century City Medical Plaza v. Sperling, Isaacs & Eisenberg* (2001) 86 Cal.App.4th 865, 868-869, 882.)

The arbitrator's amendments provided that Maljanian receive payment by a date certain and made his obligation to turn over title and release documents concurrent with his receipt of payment. These changes were made before confirmation of the award and were not inconsistent with other findings on the merits. They did not require additional evidence or hearings. Instead, they filled in the omission of which Maljanian had complained, gave him what he asked for, and are favorable to his interest relative to the original award. Rose did not claim prejudice to his interests from the amendments. Thus, the amendments did not cause demonstrable prejudice to either party.

Maljanian argues the alleged omission could not have been inadvertent because, pursuant to section 1284, he timely sought correction of the matter from Hovanesian, who refused to make any changes at that time on the ground that he had no authority to reopen the hearings. Section 1284 allows an arbitrator to correct an award on any grounds set forth in section 1286.6, subdivisions (a) and (c) within 30 days after service of the award on a party, if that party seeks corrections within 10 days after service. The subdivisions in question cover situations where there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property mentioned in the award, or where the award is imperfect in a matter of form not affecting the merits of the controversy. Maljanian contends, correctly, that the alleged omission does not fit within any of these categories. (See *A.M. Classic*, *supra*, 70 Cal.App.4th at p. 1476.) Since Maljanian treats the omission as highly significant and argues that it makes his award unenforceable, he cannot also claim that it is merely a matter of form not affecting the merits and, as such, not correctable under section 1284. Hovanesian's

refusal to correct it pursuant to that provision does not show that the omission was deliberate. What it does show, as Hovenesian stated, is that the arbitrator did not then believe he retained authority to make a correction. Because section 1284 does not apply, we reject Maljanian's contention that its time limit for corrections should apply to the amended award.

The record does not show that Hovanesian or the trial court expressly stated that the omission was inadvertent. But when the trial court remanded the matter to him and he concluded he did have jurisdiction to make the change, Hovanesian filled in the omission which the trial court pointed out to him, rather than explaining why the original award should stand unaltered. This supports a reasonable inference that the omission was indeed inadvertent. Since we must draw every reasonable inference to support the trial court's confirmation of the amended award (*Pierotti v. Torian*, *supra*, 81 Cal.App.4th at p. 24), we find that substantial evidence supports the trial court's implicit finding that the omission was inadvertent.

Maljanian also argues the trial court may not seek clarification as it did, since this procedure is not listed under section 1286. A trial court's power to seek clarification of provisions in an arbitration award is well established. (See, e.g., *DiMarco v. Chaney* (1995) 31 Cal.App.4th 1809, 1812; *Ikerd v. Warren T. Merrill & Sons* (1992) 9 Cal.App.4th 1833, 1839; *Bennett v. California Custom Coach, Inc.* (1991) 234 Cal.App.3d 333, 337-338, 340.) The trial court's procedure was in keeping with policies expressed by the California Legislature and Supreme Court, which disfavor conducting a second arbitration due to an omission in the first when that omission may be rectified without prejudice. (See *A.M. Classic*, *supra*, 70 Cal.App.4th at pp. 1477-1478.)

In sum, leaving aside the arguments about bias and nondisclosure which we have discussed in the previous section, Maljanian's only ground to seek vacation of the original award is that it was incomplete, in violation of section 1283.4, due to the omission of a set time by which he would receive his payment. Yet when the trial court offered a method to fill in that omission, Maljanian protested that the trial court's procedure was incorrect because the omission was neither inadvertent nor statutorily

authorized. The record does not show that the omission was deliberate. Since Maljanian acknowledges the omission could not be corrected under section 1284, the arbitrator's refusal to correct it after Maljanian sought correction under that statute provides no evidence the omission was deliberate. The power of an arbitrator to amend an award prior to judicial confirmation to fill in an inadvertent omission is established under California case law, as is the power of a trial court to seek clarification of an award from the arbitrator who made that award.

We find no error in the trial court's procedure in addressing the omission. We also note that if this procedure was in any way flawed, Maljanian's argument that the original award was incomplete under section 1283.4 came perilously close to inviting the error. (See *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 212-213.) Since we find no error in the trial court's confirmation of the amended award, we will not review whether the original award was complete under section 1283.4.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, Acting P.J.

We concur:

HASTINGS, J.

CURRY, J.